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BUILDER'S HARDWARE

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Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

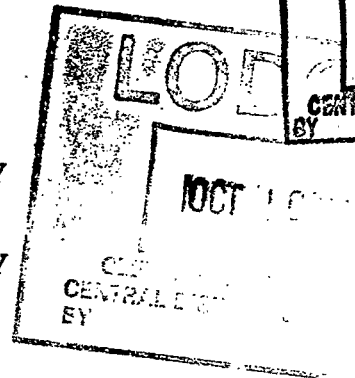
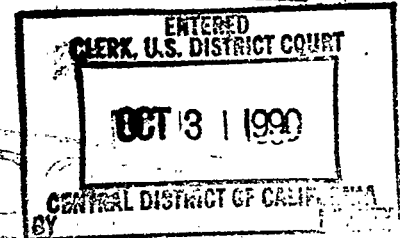
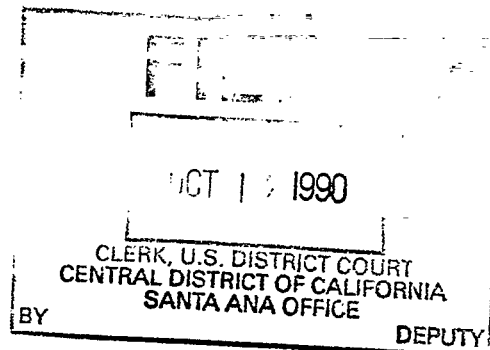
v.

BUILDER'S HARDWARE FINISHERS INC.
(a California corporation),
ELOY F. DURAN, JOSEPH N. DURAN,
and, BRADLEY LEE HERMAN, HOWARD
LANDO HERMAN, as co-trustees of
the Bradley Lee Herman Trust,
the Howard Lando Herman Trust,
and the Joel Franklin Herman
Trust,

Defendants.

CIVIL ACTION NO. CV 90-5428-RB (Ex)

CONSENT DECREE



1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE CENTRAL DISTRICT OF CALIFORNIA

3 UNITED STATES OF AMERICA,)

4 Plaintiff,)

5 v.)

CIVIL ACTION NO. CV 90-5428-RB

6 BRADLEY LEE HERMAN and HOWARD)
7 LANDO HERMAN, as co-trustees of)
8 the Bradley Lee Herman Trust,)
9 the Howard Lando Herman Trust,)
Trust,)

10 Defendants.)

11 CONSENT DECREE

12 WHEREAS, plaintiff, the United States of America (United
13 States), by the authority of the Attorney General of the United
14 States and at the request of the United States Environmental
15 Protection Agency (EPA), filed a complaint herein under Section
16 107(a) of the Comprehensive Environmental Response, Compensation,
17 and Liability Act of 1980 (CERCLA), 42 U.S.C. §9607(a), as
18 amended by the Superfund Amendments and Reauthorization Act of
19 1986 (SARA), Pub. L. No. 99-499, seeking to recover costs
20 incurred by the United States in responding to the release and
21 threatened release of hazardous substances at an electroplating
22 facility located at 1846 Sichel Street in the Lincoln Heights
23 District of Los Angeles, California; and

24 WHEREAS, a fire occurred at the facility on May 23, 1988,
25 resulting in the release of cyanide and other "hazardous
26 substances" as defined by Section 101(22) of CERCLA, 42 U.S.C.
27 §9601(22); and
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2 WHEREAS, Builder's Hardware Finishers, Inc., operated the
3 facility under a lease agreement at the time of the release of
4 hazardous substances; and

5 WHEREAS, the Bradley Lee Herman Trust, the Howard Lando
6 Herman Trust and the Joel Franklin Herman Trust held title to the
7 facility in equal shares at the time of the release of hazardous
8 substances, and continue to hold title to the facility; and

9 WHEREAS, Bradley Lee Herman and Howard Lando Herman were co-
10 trustees of the Bradley Lee Herman Trust, the Howard Lando Herman
11 Trust and the Joel Franklin Herman Trust at the time of the
12 release of hazardous substances, and remain co-trustees of the
13 three trusts; and

14 WHEREAS, Bradley Lee Herman and Howard Lando Herman, in
15 their capacity as co-trustees of the three trusts, are the
16 current "owners" of the facility within the meaning of Section
17 107(a)(1) of CERCLA, 42 U.S.C. §9607(a)(1); and

18 WHEREAS, the United States conducted a removal action at the
19 facility from May 23 through July 14, 1988, pursuant to Section
20 104(a) of CERCLA, 42 U.S.C. §9604(a); and

21 WHEREAS, the United States incurred costs of at least
22 \$505,561.98 in responding to the releases and threatened releases
23 of hazardous substances at the facility; and

24 WHEREAS, the entry of this Consent Decree does not
25 constitute an admission by any party as to any legal issue raised
26 in this action and the parties acknowledge that this document may
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2 not be used as evidence in any legal proceeding other than this
3 action; and

4 WHEREAS, the parties, by their respective attorneys, have
5 agreed that settlement of this matter is in the public interest
6 and that entry of this Consent Decree without further litigation
7 is the most appropriate means of resolving this matter;

8 NOW THEREFORE, before the taking of any testimony, without
9 trial or adjudication of any issue of fact or law, without any
10 admission or denial of the allegations in the Complaint, and upon
11 the consent and agreement of the parties to this Consent Decree,

12 IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

13 I.

14 DEFINITIONS

15 The following definitions shall apply to this Consent
16 Decree:

17 A. "CERCLA" refers to the Comprehensive Environmental
18 Response, Compensation, and Liability Act of 1980, 42 U.S.C.
19 §9601 et seq., as amended by the Superfund Amendments and
20 Reauthorization Act of 1986, Public Law 99-499.

21 B. The "Builder's Hardware facility" is a site located on
22 1846 Sichel Street in the Lincoln Heights District of Los
23 Angeles, California.

24 C. "Parties" refers collectively to all parties who are
25 signatories to this Consent Decree.

26 D. "Defendants" refers to Bradley Lee Herman and Howard
27 Lando Herman in their capacity as co-trustees of the Bradley Lee
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1 Herman Trust, the Howard Lando Herman Trust and the Joel Franklin
2 Herman Trust.

3 E. The "effective" date shall be the date when this
4 Consent Decree is signed by all counsel for Bradley Lee Herman
5 and Howard Lando Herman and the United States.

6 F. The "entry" date shall be the date when this Consent
7 Decree is signed by the Court.

8 G. The term "days" shall mean calender days.

9 H. Terms not otherwise defined herein shall have their
10 ordinary meaning unless defined in Section 101 of CERCLA, 42
11 U.S.C. §9601, or the National Contingency Plan (NCP), 40 C.F.R.
12 Part 300, in which case the definition in CERCLA or the NCP shall
13 control.

14
15 II.

16 JURISDICTION

17 This Court has jurisdiction over the subject matter of this
18 action and over the parties and venue is properly in this Court
19 pursuant to Section 113(b) and (e) of CERCLA, 42 U.S.C. §9613(b)
20 and (e), and 28 U.S.C. §1345. The Complaint states a claim upon
21 which relief may be granted against the defendants under Section
22 107(a) of CERCLA, 42 U.S.C. §9607(a).

23
24 III.

25 BINDING EFFECT

26 The provisions of this Consent Decree shall apply to and be
27 binding upon the parties hereto, their respective heirs, agents,
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2 successors in interest and assignees. The undersigned
3 representative of the defendants certifies that he is fully
4 authorized by the defendants to enter into the terms and
5 conditions of this Consent Decree and to legally bind the
6 defendants. The undersigned representatives of the United States
7 certify that they are collectively authorized to enter into this
8 Consent Decree and to legally bind the United States, subject to
9 the provisions of Section VIII of this Consent Decree.

10 IV.

11 REIMBURSEMENT

12 A. Within thirty (30) days of the entry of this Consent
13 Decree, the defendants shall pay \$455,005.78 to the United States
14 in partial reimbursement of response costs incurred by the United
15 States in the removal action at the Builder's Hardware facility.

16 B. The above-referenced payment shall be by certified or
17 cashier's check payable to the "EPA Hazardous Substances
18 Superfund", and shall be mailed to EPA Region IX, Attention:
19 Superfund Accounting, P.O. Box 360863M, Pittsburgh, Pa. 15251.
20 The transmittal of such payment shall reference the Builder's
21 Hardware facility, and shall be accompanied by correspondence
22 containing the following identifying information: United States
23 v. Bradley Lee Herman, et al., DOJ Ref. No. 90-11-3-554, and the
24 name and complete address of the paying party. Copies of the
25 checks shall be provided to Timothy Garren, United States
26 Department of Justice, P.O. Box 7611, Ben Franklin Station,
27 Washington, D.C. 20044.
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2 C. In the event that the defendants should fail to pay any
3 sum due and owing under this Consent Decree, then without further
4 order of the Court this Consent Decree shall be considered an
5 enforceable judgment for purposes of post-judgment collection in
6 accordance with Federal Rule of Civil Procedure 69, and other
7 applicable federal authority. The defendants shall be liable to
8 the United States for interest on the amount owed from the date
9 payment is due under this Consent Decree until the entire sum is
10 collected. The rate of interest shall be the same rate and
11 calculated in the same manner as is set forth in Section 107(a)
12 of CERCLA, 42 U.S.C. §9607(a). The defendants shall be liable to
13 the United States for any and all costs and attorneys fees
14 incurred by the United States in collecting any and all sums owed
15 and overdue under the terms of this Consent Decree.

16 V.

17 EFFECT OF CONSENT DECREE

18 A. Upon receipt of all monies due and owing the United
19 States under this Consent Decree, the United States releases from
20 any liability for the covered matters the following persons,
21 estates and trusts: Bradley Lee Herman, Howard Lando Herman and
22 Joel Franklin Herman, both in their individual capacities and in
23 all their representative capacities; the estates of Joseph Herman
24 and Peggy Hannah Herman; and the Bradley Lee Herman Trust, the
25 Howard Lando Herman Trust and the Joel Franklin Herman Trust.

26 B. The covered matters are defined as all response costs
27 incurred by the United States at the Builder's Hardware facility
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1
2 to December 31, 1989. The covered matters do not include
3 liability for costs incurred by the United States after December
4 31, 1989, natural resource damages or criminal liability.

5 C. Upon payment of all monies due and owing under this
6 Consent Decree, the lien acquired by the United States upon the
7 Builder's Hardware facility for response costs incurred at the
8 facility by the United States shall be extinguished as provided
9 under Section 107(1)(2)(B) of CERCLA, 42 U.S.C. §9607(1)(2)(B).

10 D. Upon payment of all monies due and owing the United
11 States under this Consent Decree, the defendants will have
12 resolved their liability to the United States for the covered
13 matters in this Consent Decree and, pursuant to Section 122(h)(4)
14 of CERCLA, 42 U.S.C. §9622(h)(4), shall not be liable for claims
15 for contribution regarding the covered matters.

16 E. Upon payment of all monies due and owing the United
17 States under this Consent Decree, the defendants shall be
18 entitled to seek contribution from Builder's Hardware and
19 Finishers, Inc., for any and all sums paid under this Consent
20 Decree as provided under Section 113(f) of CERCLA, 42 U.S.C.
21 §9613(f).

22 F. In consideration of the foregoing release from
23 liability and the other agreements contained in this Consent
24 Decree, the defendants covenant not to sue the United States for
25 any liability arising out of any activity or expenditure by the
26 United States in responding to the release or threatened release
27 of hazardous substances into the environment at the Builder's
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Hardware facility. This covenant not to sue includes, but is not limited to, any claim for reimbursement from the Hazardous Substance Response Trust Fund established by 26 U.S.C. §9507.

VI.

RESERVATION OF RIGHTS

A. Notwithstanding any other provision in this Consent Decree, the United States reserves the right to institute proceedings in this action or in a new action or to issue an Order seeking to compel the defendants to perform any additional work at the Builder's Hardware facility. The United States also reserves the right to institute proceedings in this action or in a new action seeking to reimburse the United States for future response costs at the facility. The defendants reserve any and all defenses to any such future action or proceeding by the United States.

B. Nothing in this Consent Decree shall constitute or be construed as a release or waiver of the United States' right to sue on any claim or cause of action against any person, firm, trust, joint venture, partnership, corporation or other entity not a signatory to this Consent Decree for any liability it may have arising out of or relating to the Builder's Hardware facility. The United States expressly reserves the right to sue any person or entity, other than the defendants as expressly specified herein, in connection with the Builder's Hardware facility.

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2 C. This Consent Decree in no way affects or relieves the
3 defendants' responsibility to comply with any Federal, State, or
4 local law or regulation. Nothing contained in this Consent
5 Decree shall be construed to prevent or limit the United States'
6 rights to obtain penalties or injunctive relief under CERCLA or
7 other statutes or regulations except as expressly specified
8 herein. Compliance with this Consent Decree shall be no defense
9 to any action commenced pursuant to any Federal, State, or local
10 law or regulation except as expressly specified herein.

11 D. The United States reserves any and all legal and
12 equitable remedies available to enforce the provisions of this
13 Consent Decree.

14 VII.

15 MODIFICATION

16 There shall be no modification of this Consent Decree
17 without written approval of the parties to this Consent Decree
18 and the Court.

19 VIII.

20 PUBLIC COMMENT

21 The parties agree and acknowledge that final approval by the
22 United States and entry of this Consent Decree is subject to the
23 requirements of Section 122(i) of CERCLA, 42 U.S.C. §9622(i), and
24 28 C.F.R §50.7, which provides for notice of the lodging of this
25 Consent Decree in the Federal Register, an opportunity for public
26 comment, and consideration of any comments. Having executed this
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Consent Decree, the defendants are bound by this Consent Decree unless and until final approval is denied by the United States or the Court.

IX.

CONTINUING JURISDICTION OF THE COURT

The Court shall retain jurisdiction to enforce the terms and conditions of this Consent Decree and to resolve disputes arising hereunder as may be necessary or appropriate for the construction or execution of this Consent Decree.

DATE

10-12-90

J. SPENCER LETTS

UNITED STATES DISTRICT JUDGE

WE HEREBY CONSENT to the entry of this Consent Decree, subject to the specified public notice requirements.

FOR DEFENDANTS BRADLEY LEE HERMAN AND HOWARD LANDO HERMAN

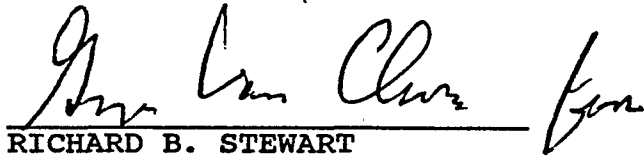
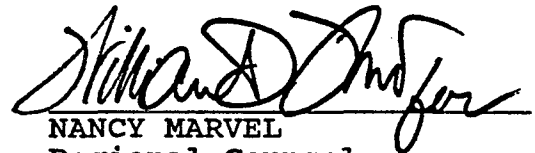
W. Herbert Young
W. HERBERT YOUNG
Groverman & Young
10 Universal City Plaza, Suite 1930
Universal City, California 91608

3/20/90

1. The first two are very similar. The first is a simple statement of fact, and the second is a statement of opinion. The third is a statement of fact, and the fourth is a statement of opinion.

FOR PLAINTIFF UNITED STATES OF AMERICA:

Department of Justice

Environmental Protection
AgencyRICHARD B. STEWART
Assistant Attorney General
Land and Natural Resources DivisionDANIEL W. MCGOVERN
Regional Administrator
EPA, Region IXNANCY MARVEL
Regional Counsel
EPA, Region IXBy: EIAN FAN
Assistant United States AttorneyGEOFFREY R. KORS
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